IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

Crl.MC.No. 2551 of 2006()

CC.1617/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

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PETITIONER: ACCUSED

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1. MATHEW K.MATHEW,
   'MATHEW'S, T.C.(/19 OLD), BEHIND TENNIS CLUB,
   KOWDIAR, TRIVANDRUM-41 (SALESMAN).

2. MATHEW K.GEORGE,
   'MATHEWS', BEHIND TENNIS CLUB,
   KOWDIAR, TRIVANDRUM-41,
   (PFA LICENCEE).

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS: COMPLAINANT & STATE

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1. THE FOOD INSPECTOR,
   CORPORATION OF TRIVANDRUM.

2. T.MURUKRAJ, S.P.III/414,
   THARUN BHAVAN, GADHIPURAM, SREEKARIYAM P.O.,
   THIRUVANANTHAPURAM.

3. STATE, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. SU NAZER
SRI.A.KRISHNAN
SRI.KIRAN GOPINATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2551 of 2006

Dated this the 9th day of April 2007

O R D E R

The petitioners are accused 1 and 2 - salesman and licencee in a prosecution under the provisions of the Prevention of Food Adulteration Act. In the trial, they have taken up a defence of warranty under Section 19 of the Act. The third accused, that is the second respondent in this Criminal Miscellaneous Case is allegedly the person who had sold the article to the second accused/petitioner. The petitioner, in the course of the trial, at the fag end, wanted to summon the local authority namely the Sreekaryam Grama Panchayat to ensure production of documents which will show that the third accused was duly licensed. That is a crucial ingredient in the attempt of the petitioner to prove the defence under Section 19 of the Act. That application was dismissed by the learned Magistrate by Annexure V order. The dismissal is basically on the ground that the application is belated. The learned counsel for the petitioner submits that the dismissal of the application on the ground of it being belated is grossly erroneous and unjust. Even assuming

that there has been lapse on the part of the petitioners, the learned Magistrate must have noted that the evidence sought to be adduced is on a crucial and vital aspect having an important bearing on the question of culpability of the petitioners and in these circumstances the petition ought to have been allowed notwithstanding the delay in filing the same. The counsel submits that the petitioners had to ascertain details and there was some delay in getting the necessary details. Only after Annexure I certificate is obtained, the petitioners could have authentically filed the application to summon the local authority for production of the relevant documents.

2. Notice was given to the respondents. The third accused/second respondent has also entered appearance through Adv.A.Krishnan. Arguments have been heard.

3. The learned counsel for the second respondent/third accused raises two contentions. The first contention is that the application is belated. The court below has already adverted to that aspect. The second contention is that even if Annexure I certificate were proved, it cannot clinch the issue as the crucial question is whether on 17/5/2001, the date of the alleged sale of

the article by the third accused to the second accused, the third accused had the requisite licence. Placing reliance on the licence which is available with the third accused, the learned counsel contends that the licence did not cover the period 17/5/2001, the date on which the bill in question is allegedly issued by the third accused. I am of the opinion that the said question need not be considered now. The crucial question is whether the third accused/second respondent was holding the licence for the relevant period. In the facts and circumstances of this case, notwithstanding the delay in making the application, I am satisfied that the petitioners must have been given an opportunity to summon the witness to appear along with the relevant documents to adduce evidence in support of their case. In not having granted that opportunity on the short ground that the application was belated, justice has certainly failed, according to me.

4. In the result, this petition is allowed. Annexure V order is set aside. The petitioner shall be granted an opportunity to summon the Secretary of the Sreekaryam Grama Panchayat to produce the licence details of the third accused in

the case. Needless to say, the third accused shall be entitled to raise all his contentions before the learned Magistrate including the contention that the alleged licence does not cover the period of the cash memo allegedly issued by the third accused. This Criminal Miscellaneous Case is accordingly allowed with the above observation.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006